A

MELEWAR LEISURE SDN BHD

v.

DANAHARTA MANAGERS SDN BHD

B

COURT OF APPEAL, PUTRAJAYA
KN SEGARA JCA
SULONG MATJERAIE JCA
JEFFREY TAN JCA
[CIVIL APPEAL NO: W-02-827-2006]

C

13 APRIL 2010

CIVIL PROCEDURE: *Summary judgment - Appeal against - Loan facility agreement - Whether there were triable issues - Pleadings, whether defective - Collateral contract - Duress - Estoppel - Conversion of wrong*

D

amount - Manifest error in certificate of indebtedness - Whether summary judgment correctly granted - Rules of the High Court 1980, O. 14

BANKING: *Securities for advances - Loan - Summary judgment, appeal against - Whether there were triable issues - Pleadings, whether defective - Collateral contract - Duress - Estoppel - Conversion of wrong amount - Manifest error in certificate of indebtedness - Whether summary judgment correctly granted - Rules of the High Court 1980, O. 14*

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This was an appeal by the appellant company ('1st defendant') against the summary judgment entered by the respondent

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('plaintiff') in the High Court under O. 14 Rules of the High Court 1980, in respect of a facility agreement for a USD10 million Banker's Guarantee/10-Year Term Loan ('facility') executed between United Malayan Banking Corporation Bhd and the 1st defendant. The following issues were raised: (i) whether the plaintiff's pleadings

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were defective *ie*, whether the plaintiff was permitted to claim an amount in the O. 14 application which was lower than the amount claimed in the amended statement of claim; (ii) whether there was an alleged breach of a purported collateral contract between the 1st defendant and the plaintiff to sell the land charged by the 1st

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defendant as security for the facility ('charged property') together with another piece of land ('2nd property'); (iii) whether the 1st defendant was under any form of duress causing it to accept a higher USD/Ringgit exchange rate; (iv) whether the 1st defendant had only agreed to convert the principal sum of USD7.5 million of

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its loan to Ringgit; and (v) whether there was any manifest error in the plaintiff's Certificate of Indebtedness.

Held (dismissing the appeal with costs)
Per KN Segara JCA delivering the judgment of the court:

(1) The plaintiff had in its affidavits fully explained the differing amounts claimed in the amended statement of claim and the O. 14 application. There was no need to amend the statement of claim for the making of the adjustment. *Krishnamurthy Nagaratnam & Anor v. The Malayan Finance Corp Bhd* (foll). (paras 15 & 16)

(2) The 1st defendant never pleaded nor made any averments to any "collateral contract" between the parties. This ought to be a non-issue. In any event, the plaintiff had informed the 1st defendant in writing that the plaintiff was only the chargee of the charged property and not of the 2nd property and was, therefore, unable to offer sale of the 2nd property to third parties. The plaintiff was neither obliged to undertake a joint sale nor was it in a legal position to do so. (paras 18 & 19)

(3) This court agreed with the High Court judge's observation that: (a) it was the 1st defendant that had instructed the conversion of the USD facility to a ringgit loan at the current rate; (b) the plaintiff had notified the 1st defendant that the plaintiff had paid Danaharta Managers (L) Ltd ('DML') the bank guarantee sum of USD9,650,859.83, which was equivalent to RM36,676,162.61; and (c) the 1st defendant had at all material times raised no objection to the said exchange rate. The High Court judge was right, in such circumstances, to hold that the 1st defendant was estopped from contending that it had not agreed to such a rate. The 1st defendant's attempt to raise "duress" as an issue was manifestly flawed and totally unsubstantiated. (paras 23 & 24)

(4) The amount owed by the 1st defendant to the plaintiff was the amount that was honoured by the plaintiff under the bank guarantee upon DML's demand. The alleged conversion of the wrong amount was without merit. (para 27)

(5) There was no reason, on the facts, to disturb the judge's findings that there were no manifest errors on the Certificate of Indebtedness. The 1st defendant's indebtedness may be ascertained conclusively by a certificate – it is conclusive evidence of the debt due to the bank. *City Bank NA v. Ooi Boon Leong & Ors* (refd); *Cempaka Finance v. Ho Lai Ying & Anor* (refd). (para 29)

A **(6)** The 1st defendant had not raised any triable issues at all and had no valid defence of any merit to the plaintiff's claim. The plaintiff was entitled to summary judgment as ordered by the High Court. (para 30)

B ***Bahasa Malaysia*** *Translation Of Headnotes*

Ini adalah rayuan oleh perayu syarikat ('defendan pertama') terhadap penghakiman terus yang dicatatkan oleh responden ('plaintif') dalam Mahkamah Tinggi di bawah A. 14 Kaedah-Kaedah Mahkamah Tinggi 1980, berhubungan dengan perjanjian kemudahan bagi
C USD10 juta Gerenti Bank/Pinjaman Jangkamasa 10-Tahun ('kemudahan') yang dilaksanakan di antara United Malayan Banking Corporation Bhd dan defendan pertama. Isu-isu yang berikut dibangkitkan: (i) sama ada pliding plaintif adalah cacat, iaitu,
D plaintif dibenarkan menuntut suatu jumlah di dalam permohonan A. 14 yang kurang dari jumlah yang dituntut di dalam pernyataan tuntutan yang dipinda; (ii) sama ada terdapat pelanggaran suatu kontrak kolateral di antara defendan pertama dan plaintif untuk menjual tanah yang digadaikan oleh defendan pertama sebagai
E gadaian bagi kemudahan ('hartanah yang digadaikan') bersama-sama dengan sebidang tanah lain ('hartanah kedua'); (iii) sama ada defendan pertama terletak di bawah apa-apa bentuk dures mengakibatkannya menerima satu kadar pertukaran USD/Ringgit yang lebih tinggi; (iv) sama ada defendan pertama hanya bersetuju
F menukarkan jumlah pokok USD7.5 juta dari pinjamannya kepada Ringgit; dan (v) sama ada terdapat apa-apa kesilapan yang jelas dalam Sijil Keterhutangan plaintif.

Diputuskan (menolak rayuan dengan kos)
Oleh KN Segara HMR menyampaikan penghakiman mahkamah:

G **(1)** Plaintif telah di dalam afidavit-afidavitnya menerangkan sepenuhnya jumlah-jumlah yang berbeza dalam pernyataan tuntutan yang dipinda dan permohonan A. 14. Tiada keperluan untuk meminda pernyataan tuntutan bagi membuat
H penyelarasan. *Krishnamurthy & Anor v. Malayan Finance Corporation Bhd* (diikuti).

(2) Defendan pertama tidak pernah memplid atau membuat apa-apa pengataan mengenai "kontrak kolateral" di antara pihak-pihak.
I Ini sepatutnya tidak menjadi sesuatu isu. Walau apapun, plaintif telah memberitahu defendan pertama secara bertulis bahawa plaintif hanya merupakan pemegang gadaian hartanah yang digadaikan dan bukan hartanah kedua dan, oleh itu, tidak dapat

menawarkan penjualan hartanah kedua kepada pihak ketiga. Plaintif tidak diwajibkan mengusahakan suatu penjualan bersama dan juga tidak berada dalam kedudukan sah di sisi undang-undang untuk berbuat sedemikian. A

(3) Mahkamah ini bersetuju dengan pemerhatian hakim Mahkamah Tinggi bahawa: (a) ia merupakan defendan pertama yang telah mengarahkan penukaran kemudahan USD kepada pinjaman Ringgit pada kadar terkini; (b) plaintif telah memberitahu defendan pertama bahawa plaintif telah membayar Danaharta Managers (L) Ltd ('DML') jumlah bank gerenti USD9,650,859.83, iaitu sebanyak RM36,676,162.61; dan (c) defendan pertama telah pada semua masa material tidak menimbulkan apa-apa bantahan kepada kadar pertukaran tersebut. Hakim Mahkamah Tinggi adalah betul, dalam keadaan sebegitu, untuk memutuskan bahawa defendan pertama telah diestop dari menghujah bahawa ia tidak bersetuju dengan kadar sebegitu. Percubaan defendan pertama untuk menimbulkan "dures" sebagai suatu isu jelasnya cacat dan tidak berasas langsung. B C D

(4) Jumlah yang dihutang oleh defendan pertama kepada plaintif adalah jumlah yang telah dihormati oleh plaintif di bawah gerenti bank atas tuntutan DML. Penukaran jumlah yang salah yang dikatakan itu tiada merit. E

(5) Tidak ada apa-apa sebab, berdasarkan fakta-fakta, untuk mengusik dapatan-dapatan hakim bahawa tidak ada kesilapan nyata di dalam Sijil Keterhutangan. Keterhutangan defendan pertama boleh ditentukan secara konklusif oleh suatu sijil – ia merupakan keterangan konklusif hutang yang perlu dibayar kepada bank. *City Bank NA v. & Ooi Boon Leong Ors* (dirujuk); *Cempaka Finance v. Ho Lai Ying & Anor* (dirujuk). F G

(6) Defendan pertama tidak langsung menimbulkan apa-apa isu yang perlu dibicara dan tiada pembelaan yang bermerit terhadap tuntutan plaintif. Plaintif berhak mencatat penghakiman terus seperti yang diarahkan oleh Mahkamah Tinggi. H

Case(s) referred to:

Cempaka Finance v. Ho Lai Ying & Anor [2006] 3 CLJ 544 FC ***(refd)***
City Bank N.A. v. Ooi Boon Leong & Ors [1980] 1 LNS 168 FC ***(refd)***
Krishnamurthy Nagaratnam & Anor v. The Malayan Finance Corp Bhd [1986] 1 CLJ 541; [1986] CLJ (Rep) 170 ***(foll)*** I

Legislation referred to:
Rules of the High Court 1980, O. 14

For the appellant - Yap Mow Jiun; M/s Heng & Co
For the respondent - Yoong Sin Min (Chung Ai Lei with her); M/s Shook Lin & Bok

[Editor's note: For the High Court judgment, please see Danaharta Managers Sdn Bhd v. Melewar Leisure Sdn Bhd & 2 Ors [2007] 1 LNS 256.]

Reported by Suresh Nathan

JUDGMENT

KN Segara JCA:

[1] This is an appeal by the appellant company (1st defendant) against the summary judgment entered by the respondent (plaintiff) in the High Court under O. 14 RHC 1980.

[2] On 31 December 1994 a Facility Agreement was executed between United Malayan Banking Corporation Berhad (UMBC) and the 1st defendant for a USD10 million Banker's Guarantee/10-Year Term Loan (the facility).

[3] The facility was for UMBC to issue a guarantee for the 1st defendant's term loan of USD10 million with UMBC International Bank (L) Ltd (UMBCL). The 1st defendant had the option to utilize the Facility to pay UMBCL and convert the same into a RM Term Loan with UMBC.

[4] As security for the Facility, the 1st defendant executed a land charge over its lease over a land (the charged property). Two persons, that is, the 2nd and 3rd defendant, also guaranteed the facility.

[5] On 29 March 1995, pursuant to the facility, UMBC issued a bank guarantee, on behalf of the 1st defendant, for USD10 million in favour of UMBCL (now known as Danaharta Managers (L) Ltd (DML).

[6] The plaintiff, by reason of its acquisition of non-performing loans and, the Vesting Certificate number 1999-00092-DM, issued under seal on 27 August 1999, had all the rights of UMBC with respect to the facility, vested upon it (the plaintiff).

[7] On 13 August 2001 the 1st defendant exercised its option to convert the USD Term Loan with DML to a Malaysian Ringgit Term Loan with the plaintiff. It faxed as follows:

> …
>
> **Conversion Of USD7.5m Loan**
>
> We are pleased to advise that the Melewar Leisure Sdn Bhd **Board has approved** the proposed conversion of the **above USD loan at the current exchange rate.** Kindly proceed to do the necessary to convert **the above loan into its RM equivalent immediately.**
>
> … (emphasis added)

[8] On 5 June 2001, in order to facilitate the conversion, and on DML's demand under the plaintiff's bank guarantee, the plaintiff effected payment to DML the sum of USD9,650,859.83 (equivalent of RM36,676,162.61). This payment was notified to the 1st defendant on 11 June 2001 as follows:

> …
>
> **Bank Guarantee No. CUKL/BG No. 95/32/F/AMD/10E For Principal Sum Of USD7,500,000.00**
>
> Arising from your letter dated 13 April 2001 to Danaharta Managers (L) Ltd ("DMLL"), instructing DMLL to convert the USD loan to be denominated in Ringgit and consequent demand by DMLL through a letter dated 5 June 2001 (photocopy enclosed) on the abovementioned Bank Guarantee issued by us, we had on 5 June 2001 honoured a claim totalling USD9, 650,859.83 (MYR equivalent of RM36, 676,162.61) in favour of Danaharta Managers (L) Ltd.
>
> …

[9] The 1st defendant thus became indebted to the plaintiff in the sum of RM36,676,162.61 as at 5 June 2001 together with interest thereon. The 1st defendant defaulted in repayment.

[10] On 10 March 2005 the plaintiff filed a writ of summons against the 1st defendant and its two guarantors. An amended statement of claim was filed on 26 May 2005.

[11] On 17 June 2005 the plaintiff exercised its rights as chargee of the charged property and realized the same for a sum of RM38.008 million, which was utilized towards reduction of the outstanding sums due from the 1st defendant.

[12] On 17 August 2005 the plaintiff applied for summary judgment against the 1st defendant and its two guarantors for the balance outstanding sum of RM10,960,008.90 as at 30 June 2005. The Senior Assistant Registrar (SAR) allowed the plaintiff's application with costs on 17 January 2006. On appeal to judge in chambers by the 1st defendant, the learned judge on 18 July 2006 upheld the SAR's decision. The two guarantors (2nd and 3rd defendant) did not appeal against the SAR's decision.

We have perused the learned judge's grounds of judgment and are in full agreement with him that the 1st defendant's appeal is without merits and that there are no triable issues.

[13] The 1st defendant raised almost the same issues that it had raised before the High Court to deny the plaintiff the summary judgment, in its present appeal before us. We are not convinced that the plaintiff should be denied the summary judgment on the basis of the said issues.

The Plaintiff's Pleadings Allegedly Defective

[14] The 1st ground of appeal concerns the issue of whether the plaintiff was permitted to claim an amount in the O. 14 application which was lower than the amount claimed in the amended statement of claim. The 1st defendant contended that by claiming a lower sum, the plaintiff was improving or amending its pleadings by affidavits.

[15] In the present appeal before us the plaintiff had in its affidavits fully explained the differing amounts claimed in the amended statement of claim and the O. 14 application, namely:

(i) the writ of summons was filed on 10 March 2005 and the amended statement of claim was filed on 26 May 2005, that is, before the charged property was realized on 17 June 2005;

(ii) the sale proceeds of the charged property amounting to RM38.008 million, which went towards reducing the sum owing by the 1st defendant, were only received by the plaintiff on 17 June 2005;

(iii) therefore, the particulars of the sale and reduction of the debt by crediting the proceeds of sale could not have been pleaded in the amended statement of claim; and

(iv) the plaintiff's claim in the O. 14 application was filed on 17 August 2005, where the claim was for the balance outstanding sum of RM10,960,008.90 (including the outstanding principal amount of RM9,327,017.47) as at 30 June 2005, after deducting the sale proceeds.

[16] We concur with the Supreme Court in *Krishnamurthy Nagaratnam & Anor v. The Malayan Finance Corp Bhd* [1986] 1 CLJ 541; [1986] CLJ (Rep) 170; [1986] 2 MLJ 134 when it held, *inter alia*, that there was no need to amend the statement of claim for the making of the adjustment:

> (1) the difference between the amount claimed and the amount to be signed in the judgment was fully explained by the respondents to the effect that credit had to be given for the value of the cars which the respondents repossessed between the date of the writ and the date of the summons in chambers. There was no need to amend the statement of claim for the making of the adjustment;

Alleged Obligation On The Plaintiff To Jointly Sell Properties

[17] The 2nd ground of appeal relates to an alleged breach of a purported collateral contract between the 1st defendant and the plaintiff to sell the charged property together with an adjoining land (the 2nd property).

[18] The 1st defendant never pleaded nor made any averments to any "collateral contract" between the parties. We are unanimous that this ought to be a non issue. In any event, the plaintiff had informed the 1st defendant in writing that the plaintiff was only the chargee of the charged property and not of the 2nd property. It was therefore not able to offer sale of the 2nd property to third parties.

[19] We are unanimous that the plaintiff was neither obliged to undertake a joint sale nor was it in a legal position to do so. The letters of the plaintiff to the 1st defendant, dated 9 March 2004 and 22 April 2004, clearly sets out the position.

> 9 March 2004
>
> …
>
> **Credit Facility Granted To Melewar Leisure Sdn Bhd ("Borrower") by Sime Bank Berhad and Acquired by Danaharta Managers Sdn Bhd (the "Facility")**
>
> We refer to your letters both dated 26.2.2004.

1. As you know, we are the chargee of the lease over Lot No. 58 ('the Charged Land') only and are entitled to exercise our rights as chargee over the same at our discretion. We are not the chargee of P.T. 1, which is charged to other lenders. In view of the previous indulgences granted to you earlier to resolve your debt with us and your inability thus far to do so, we are compelled to proceed to realize the Charged Land. We therefore regret we are unable agree to your request for us to withhold our realization of the Charged Land pending the joint realization of P.T. 1 as well.

2. As you know, we have invited bids for the purchase of the Charged Land by way of public/open tender. The tender closed on 26 February 2004. We have received a number of bids and are presently considering those bids.

3. However, in response to your aforesaid letters, we are prepared to consider a withdrawal by you of the Charged Land at the withdrawal sum of RM38,100,000.00 subject to the following conditions:

   (i) you are to revert to us with your confirmation in writing of your acceptance of this offer together with a banker's cheque for 10% of the withdrawal sum (ie RM3,810.000,00) within 14 days from date hereof;

   (ii) that the balance 90% of the withdrawal sum shall be paid to us within three (3) months from date hereof.

4. Kindly note that if we fail to hear from you within 14 days from the date hereof with your acceptance and payment of the 10% of the withdrawal sum as above stated, we shall be compelled to continue with the tender sale exercise and shall make such decision as we deem fit with regard to the sale of the Charged Land (including awarding the tender). You will note that should we choose to make an award on any bid, we shall no longer be at liberty in law to consider any offer from you for redemption of the Charged Land.

22 April 2004

...

Re: Lease under PN 9400, Lot No. 58, Mukim 31, District Kuala Lumpur, Wilayah Persekutuan ("Charged Property")

1. We refer to your letter of 8.4.2004

2. We note the contents of the aforesaid letter. As you well know Danaharta is not a chargee of HSD 50341, PT1, Bandar and Daerah Kuala Lumpur ("PT1") and has no interest in the

land. As we have informed you, Danaharta is therefore unable to make any representations to third parties with regard to PT1 or offer the same for sale.

3. As for your comment that our request for payment of RM38,100,000.00 for withdrawal of the Charged Property from the tender sale was a significant increase from the "previous agreed sum of RM34,300,000.00", we wish to place on record the following:

   a) There was no "previously agreed sum" as suggested. Danaharta was prepared to allow Melewar Leisure Sdn Bhd to redeem the Charged Property against a payment of RM34,300,000.00 subject to same being paid in accordance with the terms of our letters of 11.3.2003 and 18.7.2003.

   b) You had been unable to meet those terms, not even the payment of a deposit by 31.7.2003.

   c) It is also to be noted that our aforesaid letters were issued about a year ago and the sum we would consider for the redemption of the Charged Property cannot be static.

4. Finally, on a without prejudice basis, we are looking into your request to notify the successful bidder for the Charged Property of your offer to sell PT1.

[20] We find that the plaintiff had lawfully disposed of the charged property *via* an open tender sale to the highest bidder and, at all times fulfilled its duty as chargee to the charger of the charged property. We find there was no obligation, morally or legally, for the plaintiff to jointly sell the properties.

Alleged Duress On The 1st Defendant To Accept Exchange Rate

[21] The 3rd ground of appeal relates to the issue of whether the 1st defendant was under any form of duress causing it to accept a higher USD/Ringgit exchange rate.

[22] It is not disputed that that the 1st defendant had issued a letter dated 21 May 1999 expressly confirming that the rate of conversion for the US Dollar Loan to the Ringgit Term Loan shall be based on the prevailing conversion rate at the time of conversion, notwithstanding the provision of Section 4.01(b) of the Facilities Agreement. The letter reads:

21 May 1999

...

Term Loan Facility Up To USD10 Million

We refer to the above matter.

We further refer to the letter of offer dated 11th May, 1994 from Sime International Bank (L) now known as Danaharta Managers (L) Ltd ("Sime Labuan") and The Facilities Agreement dated 13 December, 1994 between Sime Bank (M) Bhd ("Sime Bank") and ourselves whereby we were granted the option and right to convert the US Dollars Term Loan to Ringgit Malaysia equivalent.

In consideration of you agreeing to allow us to continue with the banking facilities under the Term Loan Agreement with Sime Labuan and the Guarantee Facility Agreement with Sime Bank based on the terms and conditions stated in your letter dated 19th May, 1999, we hereby confirm and agree that **notwithstanding the provisions of Section 4.01(b) of the Facilities Agreement,** in the event we are desirous of exercising our option to convert the US Dollars Term Loan to Ringgit Malaysia equivalent, **the rate of conversion shall be based on the prevailing conversion at the time of conversion.** (emphasis added)

[23] We agree with the judge's observation in the court below that:

(i) it was the 1st defendant that had, on 13 April 2001, instructed the conversion of the US Dollar facility to a Ringgit Loan at the current rate;

(ii) the plaintiff had by its letter dated 11 June 2001 notified the 1st defendant that the plaintiff had paid DML the bank guarantee sum of USD9,650,859.83, equivalent to RM36, 676,162.61 (which reflected the exchange rate of USD1: RM3.80);

(iii) the 1st defendant had at all material times raised no objection to the said exchange rate.

[24] We are unanimous that the High Court Judge was right, in such circumstances, to hold that the 1st defendant was estopped from contending that it had not agreed to such a rate. The attempt to raise "duress" as an issue by the 1st defendant is manifestly flawed and is totally unsubstantiated. The defence must be rejected out-right.

Alleged Conversion Of Wrong Amount

[25] The 4th ground of appeal relates to the issue of whether the 1st defendant had only agreed to convert the principal sum of USD7.5 million of its loans to Ringgit.

[26] The amount of the Ringgit Term Loan was the sum which was paid by the plaintiff pursuant to its bank guarantee obligations to DML and that sum was USD9,650,859.83 (RM36,676,162.61). The said USD sum paid comprised the principal sum of USD7.5 million, interest and other charges claimed by DML and such sum was within the plaintiff's Bank Guarantee limit of USD10 million. The plaintiff duly notified the 1st defendant of the actual amount converted by its letter dated 30 January 2003. The 1st defendant made no complaints and made part payments as well as negotiated with the plaintiff to settle the debt.

> 30th January 2003
>
> …
>
> **Credit Facility (IES) Granted By Sime Bank Bhd And Acquired By Danaharta Managers Sdn Bhd**
>
> We refer to your letter dated 24th January 2003
>
> Kindly be advised that the USD7.5 million Bank Guarantee Facility was converted into a RM36.68 Term Loan Facility ("TLF") and not into a RM28.5 million TLF as stipulated in the aforementioned letter.
>
> …

[27] We agree with the High Court Judge that the amount owed by the 1st defendant to the plaintiff was the amount that was honoured by the plaintiff under the Bank Guarantee upon DML's demand. The alleged conversion of the wrong amount is without merit.

Alleged Manifest Error In The Certificate Of Indebtedness

[28] The 5th ground of appeal concerns the issue of whether there was any manifest error in the plaintiff's Certificate of Indebtedness.

The Deputy General Manager, Recovery Operations, of the plaintiff issued a "STATEMENT OF INDEBTEDNESS" dated 1 August 2005 certifying that the 1st defendant was indebted to the plaintiff as at 30 June 2005 in the sum of RM10,960,088.90 (including

outstanding principal amount of RM9,327,017.47) together with interest thereon at the rate of 2% per annum above the Base Lending Rate of Malayan Banking Berhad and a further late payment interest of 1% per annum on all overdue sums, from 1 July 2005 to date of full payment. Under section 6.02 of the Facilities Agreement the said certificate was binding on the 1st defendant unless manifest errors on the same can be shown.

> **section 6.02 Statement by Bank**
>
> If and when any of Facilities shall be cancelled withdrawn or revoked or the account in respect thereof shall be closed, **any statement or statements issued** by the General Manager, Manager, Assistant Manager, Sub-Manager, Secretary, Accountant or any other duly authorised officer of the Bank from time to time **as to the amount of such balance** and the moneys and liabilities from time to time incurred or **due to the Bank from the Borrower shall be deemed** to be accepted by the Borrower as **final and conclusive save for manifest errors,** for all purposes whatsoever including for the purpose of legal proceedings. (emphasis added)

[29] We have no reason to disturb the learned judge's findings that there were no manifest errors on the Certificate of Indebtedness. The 1st defendant's indebtedness may be ascertained conclusively by a certificate – it is conclusive evidence of the debt due to the bank: see *City Bank N. A. v. Ooi Boon Leong & Ors* [1980] 1 LNS 168; *Cempaka Finance v. Ho Lai Ying & Anor* [2006] 3 CLJ 544.

[30] We are unanimous that the 1st defendant had not raised any triable issues at all and had no valid defence of any merit to the plaintiff's claim. The plaintiff was entitled to summary judgment as ordered by the High Court.

[31] In the above circumstances, the appeal is dismissed with costs fixed at RM1,000. Deposit to respondent to account of costs.